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# County of San Diego

## CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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### FINAL NOTICES

The Citizens' Law Enforcement Review Board made the following findings in the closed session portion of its August 9, 2011 meeting, held at the San Diego County Administration Center, 1600 Pacific Highway, Room 302/303, San Diego, CA 92101. Minutes of the open session portion of this meeting will be available following the Review Board's review and adoption of the minutes at its next meeting. Meeting agendas, minutes, and other information about the Review Board are available upon request or at [www.sdcountry.ca.gov/clerb](http://www.sdcountry.ca.gov/clerb).

#### **CLOSED SESSION**

- a) **Discussion & Consideration of Complaints & Reports:** Pursuant to Government Code Section 54957 to hear complaints or charges brought against Sheriff or Probation employees by a citizen (unless the employee requests a public session).

DEFINITION OF FINDINGS	
Sustained	The evidence supports the allegation and the act or conduct was not justified.
Not Sustained	There was <u>insufficient evidence</u> to either prove or disprove the allegation.
Action Justified	The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.
Unfounded	The evidence shows that the alleged act or conduct did not occur.
Summary Dismissal	The Review Board lacks jurisdiction or the complaint clearly lacks merit.

### CASES FOR SUMMARY HEARING (9)

#### **ALLEGATIONS, FINDINGS & RATIONALE**

##### **10-039**

- Death Investigation/Pursuit - Deputy 1 engaged in the pursuit of a wrong-way driver when he collided with a bridge abutment, was ejected from the vehicle, and succumbed to injuries.

Board Finding: Sustained

Rationale: Deputy 1 caused a fatal collision because he drove at a speed unsafe for conditions in violation of Department Procedure 6.43, and not wearing a seat belt, in violation of Department Policy and Procedure 5.5.

##### **10-056**

- Illegal Search & Seizure – Deputy 1 and/or Deputy 2 confiscated the complainant's mail, pictures, and letters.

Board Finding: Summary Dismissal

Rationale: The District Attorney's Office conducted the cell search on the complainant and confiscated items as evidence. Sheriff's Department deputies provided escort only and were not involved in the search, nor did they confiscate any items. The Review Board does not have jurisdiction over the operating agency.

2. Misconduct/Procedure – Deputy 1 and/or Deputy 2 failed to provide a property receipt for articles confiscated from the complainant's cell.

Board Finding: Summary Dismissal

Rationale: See Rationale One.

3. Misconduct/Procedure – Deputy 2 failed to respond to the complainant's numerous Inmate Requests / Grievances.

Board Finding: Unfounded

Rationale: A request for all inmate grievances, requests and responses filed by the complainant was sent to the Department of Inspectional Services, with only one Grievance Report returned, and none others listed on file. Efforts to contact the complainant to secure evidence of unprocessed inmate requests and grievances were unsuccessful. Available evidence then shows that the alleged act or conduct did not occur.

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## **10-064**

1. Misconduct/Procedure – Deputy 1 failed to properly segregate the Adseg complainant from two "protected" inmates, which resulted in a fight.

Board Finding: Sustained

Rationale: Deputy 1 was aware that the complainant was an Administrative Segregation inmate (Orange Band) with a Level 5 Maximum Security classification. Detention Services Bureau policy I.57 and Court Services Bureau policy F.15 require that all personnel responsible for transporting prisoners shall obtain pertinent security information in order to determine appropriate security measures necessary to complete the transport safely. Deputy 1 had been briefed on the complainant's emotional status, informed that he was agitated and had been screaming and pounding on the walls of his cell for most of the day, while making challenging verbal threats toward the court holding staff. Detention Services Bureau policy I.51.C1 requires that all Orange Banded inmates be moved in waist and leg chains at all times. Deputy 1 claimed that a boot apparatus prevented the use of leg chains; however these same leg chains were used on the complainant shortly following his attack. Given the complainant's heightened security risk, alternative restraint devices could have been utilized if the leg chains had proven to be an unsafe or unsecure option. The failure to apply leg chains contributed to the attack on the PC inmates and the subsequent use of force. The evidence supports the allegation and the conduct was not justified.

2. Excessive Force – Deputy 1 repeatedly slammed the complainant's face into the ground and choked him.

Board Finding: Not Sustained

Rationale: Deputy 1 denies slamming the complainant's face into the ground, but admits to choking him only to restrain him. Witness deputies on scene deny observing Deputy 1 slamming or choking the complainant. One of the victims reported that the deputies ended it quickly; "did their jobs," and was thankful for them because the complainant was "so out of control." There was insufficient evidence then to either prove or disprove the allegation.

3. Misconduct/Procedure – Deputy 1 failed to follow procedure in acquiring, rendering and/or allowing first-aid treatment to the injured complainant.

Board Finding: Action Justified

Rationale: Deputy 1 reported that once the complainant was under control, he instructed an unidentified court house staff member to call 911 for a medical evaluation and treatment of all involved inmates. The time of this

attack took place at approximately 5:20 pm, with the El Cajon Fire Department arriving on scene to administer medical attention at 5:27 pm. Due to safety issues and only non-emergency medical treatment being required, the complainant was transported via the secure Sheriff bus to San Diego Central Jail where he was evaluated and treated for his injuries. Deputy 1 complied with the requirements of Detention Services Bureau policy I.89 by notifying medical and supervisory personnel. The evidence shows the alleged act or conduct did occur but was lawful, justified, and proper.

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#### **10-066**

1. Misconduct/Procedure – Deputy 1 failed to properly investigate and/or take action regarding acts of vandalism to the complainant’s property.

Board Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers’ Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the complaint showed no exceptions applied. Staff did not complete investigation of the complaint within one year, therefore the Review Board lacks jurisdiction.

2. Misconduct/Procedure – Deputy 1 threatened the complainant with arrest after she had been victimized.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

3. False Arrest – Deputy 1 arrested the complainant on July 13, 2010, for being drunk in public but refused her request for a sobriety test.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

4. Misconduct/Procedure – Deputy 1 failed to arrest the complainant’s brother, a convicted felon who violated the terms of his parole with alcohol, drugs and paraphernalia.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

5. Misconduct/Procedure – Deputy 1 failed to make an arrest after the complainant was body-slammed.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

6. Misconduct/Retaliation – The Sheriff’s Department treats the co-complainants differently because they believe the complainant threatened a San Diego Sheriff’s Deputy and/or his family (after the OIS death of Kenneth Drinkard / CLERB Case #06-008).

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

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#### **10-075**

1. Misconduct/Intimidation – Deputy 1 angrily approached the aggrieved and questioned him saying, “What are you hiding” and “Are you scared”.

Board Finding: Summary Dismissal

Rationale: Deputy 1 retired from the Sheriff's Department during the course of this ongoing investigation. CLERB does not have authority to investigate this complaint further based upon the following Rules & Regulations: Section 4: Authority, Jurisdiction, Duties and Responsibilities of Review Board: 4.1 Citizen Complaints: Authority. Pursuant to Ordinance #7880, as amended, (Article XVIII, Section 340 340.9 of the San Diego County Administrative Code), the Review Board shall have authority to receive, review, investigate and report on citizen complaints filed against peace officers or custodial officers employed by the County in the Sheriff's Department or the Probation Department.

2. False Arrest – Deputy 1 instigated an incident that led to Abel Corona's arrest by the La Mesa Police Department.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

3. False Reporting – Deputy 1 reported information that led to the aggrieved being charged with an assault.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

4. Discrimination/Other – Deputy 1 was loud and rude to the aggrieved because he has prison tattoo's.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

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**10-089**

1. Misconduct/Procedure – Deputy 3 failed to notify medical personnel that the complainant needed medical care.

Board Finding: Not Sustained

Rationale: The complainant failed to identify any date, time, or deputy related to this allegation, as such there was insufficient evidence to either prove or disprove the allegation.

2. Misconduct/Medical (I/O) – Medical Department personnel yelled at the complainant.

Board Finding: Summary Dismissal

Rationale: Medical staff issues brought forth by the complainant do not fall CLERB's jurisdiction and are referred back to the Sheriff's department for further investigation.

3. Excessive Force/Other - Deputy 1 pulled away from the complainant "...causing me to stumble, grabbed me violently by the arm, and then slammed me down into the wheelchair..."

Board Finding: Not Sustained

Rationale: Deputy 1 did not remember the complainant. There was insufficient evidence to either prove or disprove the allegation.

4. Misconduct/Discourtesy – Deputy 1 was rude and discourteous to the complainant when she yelled, "You better not fall because we don't catch!"

Board Finding: Not Sustained

Rationale: Deputy 1 did not remember contact with the complainant, but as a rule does tell inmates that are attempting to drop their weight that deputies will not catch them if they fall. Without independent witnesses there was insufficient evidence to either prove or disprove the allegation.

5. Misconduct/Discourtesy – Deputy 1 was rude and discourteous to the complainant when she yelled, “If you don’t spread them and get up and walk, then you don’t go,” and “You weren’t too sick to commit crimes so get in or don’t go.”

Board Finding: Not Sustained

Rationale: Deputy 1 did not remember contact with the complainant or transporting her to the hospital. There was insufficient evidence to either prove or disprove the allegation.

6. Misconduct/Procedure – Deputy 1 placed the waist and wrist cuffs on too tight, causing pain.

Board Finding: Not Sustained

Rationale: Deputy 1 did not remember contact with the complainant, but as a rule if an inmate complains that the cuffs are too tight she checks and adjusts them if necessary. Without independent witnesses there was insufficient evidence to either prove or disprove the allegation.

7. Misconduct/Procedure – Deputy 1 refused to check the waist and wrist cuffs to see if they were applied correctly.

Board Finding: Not Sustained

Rationale: Deputy 1 did not remember contact with the complainant, but as a rule if an inmate complains that the cuffs are too tight she checks and adjusts them if necessary. Without independent witnesses there was insufficient evidence to either prove or disprove the allegation.

8. Excessive Force/Other – Deputy 1 pushed the complainant’s wheel chair with such force into the curb causing the complainant to fall forward and out of the chair onto the ground.

Board Finding: Not Sustained

Rationale: Deputy 1 did not remember contact with the complainant and denied ever causing an inmate to fall out of a wheel chair. Without independent witnesses there was insufficient evidence to either prove or disprove the allegation.

9. Misconduct/Procedure – Deputy 1 refused to give the complainant her name and identification number.

Board Finding: Not Sustained

Rationale: Deputy 1 did not remember contact with the complainant, but stated as a rule she provides her name and ARJIS # to inmates when requested. Without independent witnesses there was insufficient evidence to either prove or disprove the allegation.

10. Misconduct/Procedure – Deputy 1 purposefully drove erratically, swerving through lanes, and riding the bumps on the road to cause the complainant pain.

Board Finding: Not Sustained

Rationale: Deputy 1 did not remember contact with the complainant and denied ever driving erratic to purposely cause anyone pain. Without independent witnesses there was insufficient evidence to either prove or disprove the allegation.

11. Misconduct/Procedure – Deputy 1 purposefully delayed by two hours the complainant’s treatment at UCSD by ignoring medical personnel.

Board Finding: Not Sustained

Rationale: Deputy 1 did not remember contact with the complainant and denied causing the complainant undue delay in treatment by medical personnel. UCSD Medical Center records indicated that the complainant was admitted at 7:39 pm, September 14, 2010 and vital signs were taken at that time. She underwent a series of tests commencing at approximately 10:08 pm and was discharged at 3:30 am, September 15, 2010. Without independent witnesses there was insufficient evidence to either prove or disprove the allegation.

12. Misconduct/Procedure – Deputy 2 used profanity toward the complainant, stating “Shit, we don’t know any of this medical stuff, we just know how to shoot guns and shit...”

Board Finding: Not Sustained

Rationale: Deputy 2 did not remember every conversation with the complainant but denied making the alleged statement or words to that effect. There were no independent witnesses to the conversation, thus there was insufficient evidence to prove or disprove the allegation.

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## **10-118**

1. Excessive Force – Deputy 1 “forcefully threw me in his vehicle” and used excessive force “while he was driving me to the jail and taking me out of the vehicle,” damaging a piercing and causing bruising.

Board Finding: Summary Dismissal

Rationale: The complainant failed to cooperate with providing an all inclusive statement, signed under penalty of perjury, for all allegations brought forth. The following CLERB Rules & Regulations apply: Section 5: Procedures Regarding Complaints: 5.1 (g) ...No complaint shall be investigated, however, until a complaint signed by or on behalf of the person aggrieved has been received by the Review Board or a member of its staff. And 5.2 ...No complaint will be deemed to have been filed with the Review Board unless and until it has been reduced to writing, and signed by the complainant or his/her representative.

2. Misconduct/Procedure – Deputy 1 “threw my dog across my house into the bath tub.”

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Illegal Search & Seizure – Deputy 1 “illegally” searched the complainant’s home.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

4. False Arrest – Deputy 1 arrested the complainant for Public Intoxication.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

5. Misconduct/Procedure – Deputy 1 failed to administer a breathalyzer and/or blood test to the complainant.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

6. Misconduct/Procedure – Deputy 1 failed to read the complainant her rights.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

7. Misconduct/Intimidation- Deputy 1 “harassed” the complainant during transport to Las Colinas.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

8. Criminal Conduct – Deputy 1 grabbed the complainant’s behind while she was handcuffed.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

9. Misconduct/Medical – Deputy 2 refused to provide the complainant with medication and/or treat her nausea/pain.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

10. Misconduct/Harassment – Deputy 2 remained in front of the complainant’s home all night after she refused to allow them to search her home.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

11. Misconduct/Procedure – Deputy 2 refused to identify two deputies who contacted the complainant.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

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## **11-049**

1. Misconduct/Discourtesy – Deputy 1 in a “very rude, arrogant, and condescending tone” said, “Take off your shoes and go through the metal detector again.” And when an alarm sounded for a third time, Deputy 1 rudely screamed “Didn’t I just tell you to take off your shoes!” “If I asked you to take your shoes off it is for a reason, do you think I want to smell your feet?!” When the complainant asked him if he got paid extra for his smart comments and insulting jokes, Deputy 1 said that they were “free, part of his job,” or words to this effect.

Board Finding: Sustained

Rationale: Deputy 1 confirmed some portions of this incident and refuted others. Deputy 1’s attempt at humor was a form of insolence and in violation of Sheriff’s Policy & Procedure 2.22, Courtesy. A legal opinion regarding misconduct determined that it includes any alleged improper or illegal act, omission or decision which produces, without any intervening agency or instrumentality, a physical, emotional, mental or psychological effect or influence upon a specific citizen or his or her property. The investigation supports the finding and the conduct was not justified.

2. Misconduct/Discourtesy – Deputy 1 “insulted” the complainant when he was admonished to remove any weapons when entering a Courthouse.

Board Finding: Action Justified

Rationale: The Court Services Bureau is required by order of the Superior Court to provide weapons screening at the designated public entrances to all county court facilities. The legal basis for the screening is a standing general court order of the San Diego Superior Court Presiding Department and Section 171(b) of the California Penal Code, which states in part, “All persons entering county court facilities are subject to screening.” Deputy 1 performed his assigned job duties and was in compliance with Sheriff’s Policy & Procedure F.06 Weapons Screening, when he properly admonished the complainant to remove all metal objects and identified various weapons by name as examples. Deputy 1’s conduct was lawful, justified and proper.

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## **11-056**

1. Misconduct/Discourtesy – Deputy 1 yelled at the complainant and called him an “asshole and mother f---er.”

Board Finding: Sustained

Rationale: Deputy 1 was in violation of Sheriff's Policy and Procedure 2.22-Courtesy and 2.4- Unbecoming Conduct. Deputy 1 denied using the alleged language but acknowledged that he verbally reprimanded the complainant by telling him "...don't cut people off and don't drive like a dumbass." Deputy 1's use of coarse and profane language reflected unfavorably upon himself and the San Diego Sheriff's Department. The investigation supports the finding and the conduct was not justified.